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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962.

No. [redacted] 46

CHARLES A. MEEKER and his wife,
SYBIL MEEKER,
Petitioners,

vs.

AMBASSADOR OIL CORPORATION,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT.

BRIEF FOR THE PETITIONERS

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962.

No. 641

CHARLES A. MEEKER and his wife,
SYBIL MEEKER,
Petitioners,

vs.

AMBASSADOR OIL CORPORATION,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT.

BRIEF FOR THE PETITIONERS

OPINION BELOW

The opinion of the United States Court of Appeals for the Tenth Circuit in this case is numbered 308 F.2d 875, and is included in the Transcript of Record (R. 53-72).

JURISDICTION

The jurisdiction of this Court is invoked under Title 28, U.S.C., Section 1254 (1). The judgment of the Court of Appeals was entered on September 10, 1962. The Petition for Writ of Certiorari was filed on December 6, 1962, and was granted on March 4, 1963.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional and statutory provisions and rules involved, all of which are set forth in the Appendix, are:

Constitution of the United States, Seventh Amendment.

28 U.S.C. 1254 (1).

28 U.S.C. 2201.

Rule 57, Rules of Civil Procedure for the United States District Courts.

Okla. Stat., Tit. 15, Sec. 75 (1951).

Okla. Stat., Tit. 16, Sec. 11 (1951).

QUESTIONS PRESENTED

I. Where the plaintiffs set forth two causes of action in a complaint, the first one being an action to establish title to certain oil interests claimed, and for an accounting, and the second for money damages based upon slander of title and interference with contract rights, with a timely demand for a jury trial endorsed thereon, may the plaintiffs be deprived of a jury trial on the basis that the action is equitable or that a determination of the issues of the quiet title action will dispose of the issues in the second cause of action?

II. Were the petitioners estopped or validly prohibited from contesting the claim of the respondent to the oil interests involved where the petitioners claimed ownership under a chain of title to which the respondent was a stranger, but had also accepted a quitclaim conveyance from a party who obtained its interests from respondent, and in the latter conveyance the petitioners expressly reserved their right to contest the validity of the respondent's claim, and, after having obtained both conveyances, the petitioners enjoyed certain benefits from the property purportedly conveyed by both instruments?

STATEMENT OF THE CASE

The petitioners, Charles A. and Sybil Meeker, were plaintiffs in the district court action and the respondent, Ambassador Oil Corporation, was one of the defendants.

Petitioners brought suit against the respondent, and others, in the United States District Court for the Western District of Oklahoma. The jurisdiction of the District Court was founded upon diversity of citizenship of the parties and on an amount in controversy exceeding the sum of $10,000.00 (R. 2-3).

The trial court found in favor of the defendant, and was sustained on appeal to the United States Court of Appeals for the Tenth Circuit.

The complaint upon which this action was based contained two causes of action. The first was to establish title of the petitioners to the oil and gas leasehold interests claimed and asked for an accounting of amounts received by the respondent, and the second was a tort action for money damages based upon interference with contract rights, and libel and slander of title to the leasehold in-

terests involved. A demand for a trial by jury was made by endorsement on the complaint (R. 2-8).

The trial court denied the demand for a jury trial on the ground that the action was equitable, and overruled the petitioners' motion to reconsider the denial of a jury trial (R. 14, 15).

Hettie E. Lowder was the surface landowner of the property in question, and on June 3, 1953, she executed a five year oil and gas lease to H. S. Smith, who assigned the lease to W. G. Haun on December 30, 1955; and on December 30, 1957, W. G. Haun assigned his interest in the lease to Herman L. Hurst, for no cash consideration, reserving a 1/16 of 7/8 overriding royalty interest (R. 16).

On April 30, 1958, Herman L. Hurst procured another oil and gas lease on this property, dated June 3, 1958 (Pl. Ex. 1; R. 24-25, 47-48). By an instrument dated May 15, 1958, and recorded June 12, 1958, Hurst transferred to the petitioners a 1/32 overriding royalty and a 33/128 working interest, Hurst and his wife retaining a 1/32 overriding royalty (Pl. Ex. 2; R. 25, 48-50). On October 2, 1958, Hurst conveyed to Meekers all of his remaining interests in the lease (Pl. Ex. 3; R. 25, 51).

On July 22, 1958, the respondent, Ambassador Oil Corporation, obtained another oil and gas lease on the same property from Mrs. Lowder (R 4, 9). When obtaining this lease, the respondent knew that the Hurst lease was of record, and that the Hurst-Meeker group had already brought in the Robinson well on directly offsetting acreage, but did not contact Hurst or Meeker to obtain releases (R. 29, 38, 39, 40, 44, 45). The Hurst-Meeker group was swabbing oil in the Robinson well on June 16, 1958, and it was completed as a producer on July 9, 1958 (R. 39).

The undisputed testimony shows that it is the practice and procedure in the oil business in that area to obtain releases from holders of prior leases, when obtaining a subsequent lease on property (R. 29, 39, 40).

The trial court found that the Lowder well, on the property in question in this case, was commenced during the primary term of the 30-day lease under which the petitioners claim, but that the lease thereafter terminated for failure to continue the drilling operations with due diligence (R. 19).

Hurst initiated the drilling operations on the lease just prior to July 3, 1958 (R. 16, 19). Shortly after the work was commenced, a disagreement arose with Sunray Oil Company, who had adjoining acreage, as to well spacing, and operations were discontinued, except for some preliminary work done in August, until the Corporation Commission gave a ruling on spacing, on September 2, 1958, at which time the drilling operations were immediately resumed and a producing well was brought in (R. 17, 27, 28, 38).

The first time that the petitioners or any of their group knew of the claim of Ambassador Oil Corporation was on September 9, 1958, when the well was drilled past 2,200 feet (R. 17, 28, 29). When the claim of Ambassador Oil Corporation was made known, Hurst negotiated a purported settlement of the dispute, at the direction of Domestic Oil Corporation, who was then engaged in the actual drilling for the Meeker group, but without knowledge or authorization of Meeker, and the well was continued under the new arrangement (R. 17, 18, 31, 35, 36, 40, 41).

Meekers later took a working interest quitclaim assignment from Domestic Oil Corporation under the Am-

bassador lease, but reserved the right to contest the validity of this latter lease (Def. Ex. 5; R. 34, 45-46, 43).

If Meekers' claims under the first lease are valid, their present interests are a 1/16 overriding royalty and a 27/128 x 15/16 x 7/8 working interest. If the Ambassador lease were the valid lease, Meekers' interests would be a 27/128 x 29/32 x 7/8 working interest, with no overriding royalty, and subject to a $2,500.00 oil payment, Ambassador Oil Corporation having retained the oil payment and a 3/32 overriding royalty (R. 6, 11, 18, 56, 59).

The petitioners take issue with certain factual statements of the Court of Appeals.

The Court of Appeals stated in its opinion that Meeker did not repudiate the agreement between Ambassador Oil Corporation and Domestic Oil Corporation, and that he stood by until the well was completed as a producing well (R. 61, 66). The record shows that Mr. Meeker did not even take his assignment under the Ambassador lease until October 8, 1958 (Def. Ex. 5; R. 34, 45-46). Ambassador Oil Corporation and Domestic Oil Corporation resumed drilling operations under the purported settlement agreement, without Meeker's knowledge or agreement, approximately one month prior to this time, and completed the well as a producer on October 4, 1958 (R. 31, 32, 35-37, 40, 41, 60). Meeker at all times clearly stated his objections to the respondent's claims (R. 32, 35-37, 40, 41). He did accept the quitclaim conveyance from Domestic Oil Corporation for a part of his interest claimed, but expressly reserved in the instrument his right to contest the validity of the interest claimed by Ambassador Oil Corporation (Def. Ex. 5; R. 34, 45-46, 43).

The Court of Appeals stated that Meekers signed division orders and accepted benefits under the Ambassador

lease (R. 67). Meeker at all times made it clear that he had paramount title under his first lease, and therefore any benefits accepted were under it (R. 42-44).

The Court of Appeals stated that Hurst had not been given an extension of the 30-day lease by Mrs. Lowder (R. 58-59). Hurst testified that Mrs. Lowder had given him an oral extension (R. 26, 28, 30).

The trial court held that the 30-day lease had terminated for failure to continue the drilling operations with due diligence (R. 19). The Court of Appeals stated that under the facts and circumstances it could not say that the finding was erroneous, and accordingly affirmed it (R. 66). However, Hurst and Meeker both testified that drilling operations were terminated due to a spacing dispute with Sunray Oil Company, that drilling was resumed immediately upon the issuing of a spacing order by the Corporation Commission, and that it would not have been reasonable to continue operations in light of the dispute until the spacing order was obtained (R. 25-28, 41-42). This testimony was undisputed.

ARGUMENT

I. The Petitioners Were Entitled to a Trial by Jury.

A trial by jury was requested by the petitioners by endorsement on their complaint (R. 8). The trial court denied the request upon the grounds that the actions were equitable (R. 14), and also denied the motion made by the petitioners to reconsider its action and allow a trial by jury (R. 14-15).

Factual matters in dispute for consideration of a jury were whether drilling operations were continued with due diligence, and, if not, whether an oral extension was given

and a sufficient change of position made with reliance thereon to remove it from the prohibition of the Statute of Frauds; and the accounting prayed for in the complaint.

The petitioners were entitled to a jury trial on their first cause of action, first, because an accounting was prayed for in the complaint (R. 8), and, secondly, because this action was within the scope of the Declaratory Judgment Act.

In *Dairy Queen, Inc.*, v. *Wood*, 369 U.S. 469 (1962), this Court stated:

> ". . . The necessary prerequisite to the right to maintain a suit for an equitable accounting, like all other equitable remedies, is, as we pointed out in Beacon Theatres, the absence of an adequate remedy at law. Consequently, in order to maintain such a suit on a cause of action cognizable at law, as this one is, the plaintiff must be able to show that the 'accounts between the parties' are of such a 'complicated nature' that only a court of equity can satisfactorily unravel them."

An accounting of sufficient complexity to prohibit a jury trial was not shown and does not exist in this case.

Under the older procedure, title to land could be determined in either a legal action by jury, if requested, or in an equitable action by the court, depending generally upon whether or not the plaintiff was in possession. *Whitehead* v. *Shattuck*, 138 U.S. 146 (1891); *Lancaster* v. *Kathleen Oil Co.*, 241 U.S. 551 (1916).

In *Whitehead* v. *Shattuck, supra*, the Court stated:

> ". . . And so it has been held by this court 'that whenever a court of law is competent to take cognizance of a right, and has power to proceed to a judgment which affords a plain, adequate, and complete remedy, without the aid of a court of equity, the

> plaintiff must proceed at law, because the defendant has a constitutional right to a trial by jury.' Hipp v. Babin, 19 How. 271, 278. It would be difficult, and perhaps impossible, to state any general rule which would determine in all cases what should be deemed a suit in equity as distinguished from an action at law, for particular elements may enter into consideration which would take the matter from one court to the other; but this may be said, that where an action is simply for the recovery and possession of specific, real or personal property, or for the recovery of a money judgment, the action is one at law. An action for the recovery of real property, including damages for withholding it, has always been of that class. The right which in this case the plaintiff wishes to assert is his title to certain real property; the remedy which he wishes to obtain is its possession and enjoyment; and in a contest over the title both parties have a constitutional right to call for a jury."

In regard to determining title to land under the Declaratory Judgment Act, this Court has now stated in *Beacon Theatres* v. *Westover*, 359 U.S. 500 (1959):

> ". . . Since in the federal courts equity has always acted only when legal remedies are inadequate, the expansion of adequate legal remedies provided by the Declaratory Judgment Act and the Federal Rules necessarily affects the scope of equity. Thus, the justification for equity's deciding legal issues once it obtains jurisdiction, and refusing to dismiss a case, merely because a substantial legal remedy becomes available, must be re-evaluated in light of the liberal joinder provisions of the Federal Rules which allow legal and equitable causes to be brought and resolved in one civil action. Similarly the need for, and therefore, the availability of such equitable remedies as Bills of Peace, Quia Timet and Injunction must be reconsidered in view of the existence of the Declaratory Judgment Act as well as the liberal joinder provision of the Rules."

An action to quiet title to land by one in possession is a bill quia timet. *McConihay* v. *Wright,* 121 U.S. 201 (1887); *4 Pomeroy's Equity Jurisprudence (5th Ed.) 1021, 1027, Sections 1394 and 1398.*

No particular form of pleading is required under the Declaratory Judgment Act. *28 U.S.C. 2201; Rule 57, Rules of Civil Procedure for the United States District Courts* (Appendix).

As shown by the prayer of the petitioners' complaint (R. 7-8), no injunctive or other equitable relief was sought in this action. Under the Declaratory Judgment Act, the trial court should have allowed the jury to make a determination of legal title to the oil interests involved.

The technicality of whether or not the plaintiff is in possession should no longer be determinative of whether legal title to land may be decided by a jury in an ejectment action or must be determined by a court of equity in an action to quiet title.

The petitioners were entitled to a jury trial on their second cause of action, which involved all of the same basic facts as the first cause of action, for the reason that it was purely an action for money damages (R. 6-8). The Court of Appeals recognized this in its opinion, but stated (R. 66):

> "The Meekers would have been entitled to a jury trial upon proper and timely request therefor of any issues remaining for determination on their second claim. However, the trial court, in the exercise of its equity jurisdiction, had determined that the 30-day lease had terminated and that the Meekers had no title to any interest under such lease. Since the Meekers had no title that could have been slandered by the acts of the defendants, no issues were left to be tried on the Meekers' second claim."

This decision of the Court of Appeals for the Tenth Circuit was directly contrary to decisions of the Eighth and Ninth Circuits, and of this Honorable Court, which have all held that in actions where legal and equitable issues are joined, the right to a trial by jury is closely guarded, and the court may not try the equitable part of the action first, thereby causing the facts in the legal action to become res judicata, unless some special and impelling reasons for doing so exist in a particular case. *Leimer* v. *Woods*, 196 F.2d 828 (8th Cir. 1952); *Bruckman* v. *Hollzer*, 152 F.2d 730 (9th Cir. 1946); *Beacon Theatres* v. *Westover*, 359 U.S. 500 (1959). This would be true even though the equitable cause clearly outweighed the legal cause so that the basic issue of the case taken as a whole is equitable. As long as any legal cause is involved, the jury rights it creates control. *Thermo-Stitch* v. *Chemi-Cord Processing Corp.*, 294 F.2d 486 (5th Cir. 1961); *Dairy Queen, Inc.*, v. *Wood*, 369 U.S. 469 (1962).

II. The Court Erred in Finding That the Petitioners in Any Manner Ratified the Interest Claimed by the Respondent or Were in Any Way Prohibited from Contesting That Interest.

In its opinion, the Court of Appeals stated that the petitioners accepted benefits under the lease interest claimed by the respondent and stood by and allowed certain work to be done under the latter claim, which amounted to a ratification of the claim, and that the petitioners were therefore prohibited or estopped from contesting it (R. 61, 66, 67). The Petitioners' disagreement with these factual statements were set forth above in the Statement of the Case. It is further pointed out that all of the factual conclusions set forth by the Court of Appeals and the trial court are matters which should have been determined by a jury and not the court.

We do not agree that there is any evidence in this case of facts, disputed or undisputed, which would have estopped or prohibited Meekers from contesting the respondent's claim. Mr. Meeker at no time acquiesced to Ambassador's claim, so there could be no reliance and change of position necessary for estoppel.

Oklahoma statutes that may be construed as involved on this point are *Okla. Stat., Tit. 15, Sec. 75 (1951)*, and *Okla. Stat., Tit. 16, Sec. 11 (1951)* (See Appendix). The court of appeals apparently relied on Section 75, Title 15 (R. 67).

There can be no ratification of any agreement between Meekers and Ambassador Oil Corporation, first, because Meeker has never had any agreement or transactions of any kind with that defendant and no one has ever purported to bind Meeker in any transactions with that company. There is nothing to ratify. Secondly, because in the only transaction Meekers have had with any privies of Ambassador, they not only did not ratify the Ambassador claim, but plainly stated that they did not recognize it and expressly reserved their right to contest it.

As to the conveyance from Domestic Oil Corporation to Meekers (Def. Ex. 5; R. 34, 45-46), the petitioners do not contest the validity of the "transaction," or any obligations under it. They expressly reserved the right to contest and deny the prior lease of Ambassador Oil Corporation, and such reservation was in and a part of the assignment. It is the respondent, not the petitioners, who is trying to deny its validity, and the respondent was not even a party to the transaction.

In construction of contracts, apparently conflicting provisions must be reconciled, rather than nullified, if reconciliation can be effected by any reasonable interpre-

tation. *17A C.J.S 163-164, Contracts, Sec. 309; 12 Am. Jur. 773, Contracts, Sec. 241; Frankfort Oil Co.* v. *Snakard,* 279 F.2d 436 (10th Cir. 1960).

Where two clauses are so repugnant that they cannot stand together, the first will be retained and the second rejected. *12 Am. Jur. 778, Contracts, Sec. 243; 17A C.J.S. 166, Contracts, Sec. 309; Fairbanks, Morse & Co.* v. *Miller,* 80 Okla. 265, 195 Pac. 1083 (1921).

General terms and provisions in a contract yield to specific ones. *12 Am. Jur. 779, Contracts, Sec. 244; 17A C.J.S. 173, Contracts, Sec. 313;* also see *Popplewell* v. *Jones,* 202 Okla. 185, 211 P.2d 283 (1949).

Mr. Meeker's obvious intention was to insure getting the working interest set forth in the latter conveyance, and at the same time reserve his right to have title to the 1/16 overriding royalty determined by litigation. A person may contract to do anything subject to restrictions of legality and public policy, and under no reasonable construction could the clause reserving the right to contest Ambassador's claim be determined invalid, even though a later general clause in the instrument states that the assignment is subject to the provisions of Ambassador's assignment to Domestic Oil Corporation. The proper interpretation of the instrument is that it was subject to the terms of the Ambassador assignment, if valid, but also subject to Meekers' right to contest the validity of the Ambassador lease.

Whether or not they received any benefits under the instrument is not material to this case, since they have always consented to all of the obligations involved. As a matter of fact, however, it is the position of the petitioners that they have never received any benefit under this instrument, since by the prior conveyance they al-

ready had paramount title to all of the property included in the latter, and more.

Regarding the statute noted above on estoppel by deed or conveyance (Sec. 11, Tit. 16), the Oklahoma cases on the subject show that it is no more than a restatement of the common law, as is the other statute referred to.

The very essence of an estoppel is that a person claiming its benefits must have been induced to do the things he did do, or to have altered his situation relying on the conduct of the party against whom the doctrine is invoked. *Tidal Oil Co.* v. *Flanagan*, 87 Okla. 231, 209 Pac. 729 (1922); *Coats* v. *Riley*, 154 Okla. 291, 7 P.2d 644 (1931).

A person already claiming title under a conveyance does not admit title in another by purchasing adverse claims, and is not estopped by the purchase from denying the validity of the claims purchased. *19 Am. Jur. 622, Estoppel, Sec. 23; 31 C.J.S. 199, Estoppel, Sec. 15; Newcomb* v. *Chapman*, 344 P.2d 1058 (Okla. 1959).

A deed having no validity cannot be the basis of an estoppel. *31 C.J.S. 223, Estoppel, Sec. 43; Coats* v. *Riley, supra.*

A quitclaim conveyance, such as is involved in this action may not be the basis of an estoppel. *31 C.J.S. 202, Estoppel, Sec. 18;* see *Weaver* v. *Drake*, 79 Okla. 277, 193 Pac. 45 (1920); *Newcomb* v. *Chapman, supra.*

All elements of estoppel are missing in this case. Meeker at all times claimed title paramount to that of the respondent and at no time agreed to any compromise. The well could not very well have been drilled relying on any act of Meeker when he did not even accept an assignment under the Ambassador lease until after the well was completed.

Even had the petitioners not reserved their right to contest the Ambassador claim, they would not have been estopped or prohibited from denying it. The case of *Newcomb* v. *Chapman, supra,* has completely disposed of all issues in this case as to ratification and estoppel. There the plaintiff brought an action to quiet title to mineral interests in Oklahoma. The question presented was whether the plaintiff, after purchasing a part of the mineral interest by a quitclaim deed from the grantee of a tax deed, was estopped from attacking the tax deed and claiming the entire interest in the property under a prior conveyance. The court stated, ". . . we are mindful of the fact that generally estoppel of the grantee of a deed is of the nature of equitable estoppel, and is predicated on the inability of a person in the eyes of the law to acquiesce in, and enjoy the benefits of a transaction, and at the same time reject the accompanying burdens," but held in favor of the plaintiff upon the reasoning and propositions of law set forth above.

CONCLUSION

For the reasons stated, the decisions of the courts below should be reversed upon the points of law set forth herein, and an order should be entered granting the petitioners a trial by jury in accordance therewith.

Respectfully submitted,

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APPENDIX

Constitution of the United States—Seventh Amendment:

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

28 U.S.C. 1254 (1):

Cases in the Courts of Appeal may be reviewed by the Supreme Court by the following methods:

(1) By Writ of Certiorari granted upon Petition of any party to any civil or criminal case before or after rendition of judgment or decree.

28 U.S.C. 2201:

In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

Rule 57, Rules of Civil Procedure for the United States District Courts:

The procedure for obtaining a declaratory judgment pursuant to Title 28, U.S.C., Section 2201, shall be in accordance with these rules, and the right to trial by jury

may be demanded under the circumstances and in the manner provided in Rules 38 and 39. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

Oklahoma Statutes, Title 15, Section 75 (1951):

Acceptance of benefit includes obligations.—A voluntary acceptance of benefit of the transaction is equivalent to a consent to all of the obligations arising from it so far as the facts are known to the person accepting. R. L. 1910, Sec. 920.

Oklahoma Statutes, Title 16, Section 11 (1951):

Estoppel by receiving benefits.—Any person or corporation, having knowingly received and accepted the benefits or any part thereof, of any conveyance, mortgage or contract relating to real estate shall be concluded thereby and estopped to deny the validity of such conveyance, mortgage or contract, or the power or authority to make and execute the same, except on the ground of fraud; but this section shall not apply to minors or persons of unsound mind who pay or tender back the amount of such benefit received by themselves. R. L. 1910, Sec. 1150.